

Implementation Day: What Does It Mean for U.S. Companies Interested in Iran?

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This Saturday, January 16, 2016, the International Atomic Energy Agency (IAEA) certified that Iran satisfied their obligations under their nuclear-related interim obligations under the Joint Comprehensive Plan of Action (JCPOA), also known as the Iran Deal. Upon that certification, Saturday became “Implementation Day,” and a range of important changes to U.S. and European sanctions on Iran were triggered.

Under the JCPOA, Implementation Day is the day that the U.S. and European parties to the JCPOA are obligated to provide relief from the economic sanctions that have been imposed on Iran since 2012. Implementation Day is the most significant milestone to be reached under the JCPOA to date, and the next milestone, “Transition Day”, will not occur until nearly eight years from now.

The changes to economic sanctions resulting from Implementation Day are sweeping, but it is very important for U.S. persons and companies to take note of the very different implications of the changes for U.S. and European business entities.

A Boon to European Companies

Economic sanctions prohibiting companies and persons in Europe from transacting business became comprehensive in 2012, and on Saturday nearly all of those sanctions were lifted. European companies and persons are now almost entirely free to engage in exports, imports, and other transactions involving Iran and Iranian entities. These changes come on the heels of previous guidance from enforcement officials allowing European entities to engage in a range of activities in preparation for business with Iran, so companies outside of the U.S. should be able to move quickly to take advantage of new market opportunities in Iran.

A More Complicated Legal Environment for U.S. Persons and Companies

Under the terms of the JCPOA, the U.S. only committed to lifting nuclear, or secondary, economic sanctions and release the assets that have been blocked by the U.S. government since the Iranian revolution. Accordingly, on Saturday the U.S. government announced that approximately 400 persons and companies have been removed from the Specially Designated Nationals (SDN) list enforced by the Office of Foreign Assets Control (OFAC), and the U.S. announced that it will no longer impose penalties on *non-U.S.* persons and companies for involvement in most transactions involving Iran.

However, the general embargo on trade between the U.S. and Iran remains in place—meaning that U.S. persons and companies (with a few limited exceptions, including the importation of Iranian pistachios and the export of U.S. aircraft and aircraft equipment to Iran) cannot directly or indirectly engage in financial transactions, exports, imports, or other business opportunities connected to Iran. Additionally, the prohibition on U.S. persons and companies facilitating transactions between third parties and Iran also remains in force.

Back to the Future—The Complicated Case of Non-U.S. Entities Owned or Controlled by U.S. Persons or Companies

Prior to the adoption of comprehensive sanctions on Iran by European governments in 2012, non-U.S. affiliates and subsidiaries of U.S. companies could transact most business with Iran legally, provided that no U.S. persons or companies were involved in those transactions. This was a very difficult legal environment to navigate, as OFAC provided very little guidance on how to properly segregate U.S. and non-U.S. operations, and it was not unusual for U.S. parent companies to confront costly investigations and penalties related to their affiliates' work in Iran. With the arrival of Implementation Day, we have returned to this type of legal environment.

On Saturday, OFAC issued a general license allowing companies owned or controlled by U.S. persons or companies to engage in the same transactions involving Iran that are allowable under U.S. law for other non-U.S. companies. The license allows U.S. companies to establish the policies and procedures necessary to create sufficiently independent non-U.S. subsidiaries. The license also provides that such subsidiaries can use the computer, accounting, email, and other business platforms that are part of the parent company's integrated business operations. However, the license does not allow any U.S. persons to be involved in transactions connected to Iran, and all U.S. persons and companies are still prohibited from providing any personnel, services, goods, or equipment in furtherance of trade with Iran.

The Bottom-Line: U.S. Companies Need to Look Before They Leap

Implementation Day raises almost as many questions about sanctions as it answers. For example, outside of the general license issued Saturday, U.S. persons and companies can request specific licenses from OFAC to engage in more direct transactions with Iran. However, it remains to be seen how such requests will be treated by the Obama Administration, and with a new President taking office in 2017, it is likely that the politics surrounding Iran will produce further changes in the business options for U.S. companies.

Overall, while the recent changes to sanctions on Iran are unquestionably significant, U.S. companies hoping to take advantage of business opportunities in Iran will need to move carefully. Engaging in transactions involving Iran, even through non-U.S. affiliates, will be practically and legally complex, and the risk of liability and public criticism remains. Companies formed or operating in the U.S. that want to explore new opportunities in Iran should seek advice from counsel who can evaluate, and help those companies navigate, these unique political, communication, and legal challenges.